

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Bilateral Agreement Between United States Postal  
Service and Royal Mail Group, LTD (MC2010-34)  
Negotiated Service Agreement

Docket No. CP2015-1

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE NOTICE CONCERNING  
BILATERAL AGREEMENT WITH ROYAL MAIL GROUP, LTD.  
NEGOTIATED SERVICE AGREEMENT

(October 9, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2204.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of its entry into an additional bilateral agreement with Royal Mail Group, Ltd. (Royal Mail).<sup>2</sup> The Postal Service seeks to include the portion of the agreement with Royal Mail (Royal Mail Agreement) "pertaining to returns from the United States to the United Kingdom" within the larger grouping of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.<sup>3</sup> Notice at 1.

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<sup>1</sup> PRC Order No. 2204, Notice and Order Concerning Bilateral Agreement with Royal Mail Group, Ltd. Negotiated Service Agreement, October 2, 2014.

<sup>2</sup> United States Postal Service Notice of Filing Functionally Equivalent Agreement with Royal Mail Group, Ltd., October 1, 2014 (Notice).

<sup>3</sup> The Postal Service is also creating a system for the return of items from the United Kingdom to the United States as a part of the ongoing International Merchandise Return Service (IMRS) Market Test subject to Docket No. MT2013-2. Simultaneously to the current Notice, the Postal Service filed an update to Docket No. MT2013-2 to "cover the changes to customers whose merchandise is being returned to the United States from the United Kingdom." Notice at 1. See *also* Notice of the United States Postal Service of Change to Market Test of Experimental Product – International Merchandise Return Service – Non-Published Rates, October 1, 2014 at 1-2. As the Postal Service confirms, inbound parcels from the UK will continue to be accepted under either UPU rates or the existing bilateral Air Parcel Post Agreement with Royal Mail. Notice at 5.

Previously, in Order No. 546, the Commission approved the addition of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list, and included within that product an agreement with Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement).<sup>4</sup> The Commission later authorized the TNT Agreement as the baseline for functional equivalency analyses of other agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>5</sup> The Commission subsequently included additional multiple bilateral agreements within the Foreign Postal Operators 1 product.<sup>6</sup>

The Postal Service states that the Royal Mail Agreement is functionally equivalent to the baseline TNT Agreement because its terms “remain similar in scope and purpose”. Notice at 2. The Postal Service claims that the Royal Mail Agreement is also functionally equivalent to two other bilateral agreements that both contain an IMRS product and already included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>7</sup> Notice at 4. The Royal Mail Agreement offers

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<sup>4</sup> PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

<sup>5</sup> PRC Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011 at 5.

<sup>6</sup> These include among others the following Postal Service agreements: with Posten Norge AS, *Id*; with China Post Group (PRC Order No. 859, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011); with Australian Postal Corporation (PRC Order No. 956, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2012-1, November 9, 2011); with Canada Post Corporation (PRC Order No. 1088, Order Adding an Additional Bilateral Agreement to Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Product, Docket No. CP2012-4, December 30, 2011); with HongKong Post (PRC Order No. 1580, Order Approving an Addition Inbound Competitive Multi-Service Agreement with Foreign Postal Operators Negotiated Service Agreement, Docket No. CP2013-22, December 17, 2012); and with Deutsche Post (PRC Order No. 1761, Order Approving Addition of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Deutsche Post), Docket No. CP2013-65, June 26, 2013).

<sup>7</sup> See PRC Order No. 1933, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Australian Postal Corporation), Docket No. CP2014-12, December 30, 2013, and PRC Order No. 1934, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Canada Post Corporation), Docket No. CP2014-13, December 30, 2013.

competitive service to Royal Mail that includes rates for IMRS. *Id* at 1. The Notice concerns the return of Express Mail Service (EMS) parcels from the United States to the United Kingdom, and the Postal Service characterizes the returned parcels as “ancillary to the provision of inbound parcel services provided to Royal Mail” *Id*.

The Effective Date of the Royal Mail Agreement is not yet determined, and the Postal Service will notify Royal Mail of the Effective Date “as soon as reasonably practicable” and after the necessary approvals, but not earlier than October 15, 2014. . Notice at 3 and Attachment 1 at 7. The Royal Mail Agreement is intended to remain in effect for a period of one calendar year after the Effective Date unless terminated sooner. *Id*.

On October 6, 2014, a Chairman’s Information Request (CHIR) No. 1 was issued and requested the Postal Service to clarify its filing in the case. On October 8, 2014 the Postal Service provided its written response to CHIR No 1.<sup>8</sup>

## COMMENTS

The Public Representative has reviewed the Royal Mail Agreement and the supporting documentation including the financial model filed under seal that accompanied the Postal Service’s Notice and the Postal Service’s Response. It appears that Royal Mail Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. The Public Representative concludes that the proposed rates are within the scope established by the Governors’ Decision 10-3<sup>9</sup> as required by U.S.C. § 3632. However, the Public Representative finds that Royal Mail Agreement is not functionally equivalent to the baseline TNT Agreement.

39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Royal Mail Agreement covers its attributable costs, that competitive products are not subsidized by market dominant products, and that all

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<sup>8</sup> Response of the United States Postal Service to Chairman’s Information Request No. 1, Docket No. CP2015-1, October 8, 2014 (Response).

<sup>9</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, August 6, 2010 (Governors’ Decision No. 10-3).

competitive products collectively cover an appropriate share of institutional costs of the Postal Service. The financial model (filed under seal) and included with the Postal Service's Notice incorporated negotiated IMRS settlement rates from Annex 1 of the Royal Mail Agreement. Notice, Attachment 1 at 11. In this proceeding, the Postal Service's financial model does not demonstrate that the addition of the Royal Mail Agreement would ensure that all competitive products collectively cover an appropriate share of the institutional costs as required by 39 U.S.C. § 3633(a)(3). However, the Postal Service's financial model shows that the negotiated IMRS settlement rates in the Royal Mail Agreement should generate sufficient revenues to cover its attributable costs in satisfaction of 39 U.S.C. § 3633(a)(2), and also will satisfy the requirements of 39 U.S.C. § 3633(a)(1).

*Functional Equivalence.* The Postal Service asserts that the Royal Mail Agreement has similar characteristics and is functionally equivalent to the baseline agreement because these agreements: (1) contain terms that are "similar in scope and purpose" and (2) "share most terms and clauses in common." Notice at 2. The Public Representative cannot consider these very broad statements, unsupported by any detailed information, to be sufficient to determine the functional equivalence between the Royal Mail Agreement and the baseline TNT Agreement. The Postal Service, however, argues that there are a few "[o]ther agreements "filed within this group and reviewed by the Commission" that had "similar ancillary return service features for foreign origin parcels, including the Canada Post Bilateral and the Australia Post Bilateral."<sup>10</sup> Notice at 2-3. The Public Representative reviewed the related documentation and, for the reasons described below, concludes that the Royal Mail Agreement is not functionally equivalent to the baseline TNT Agreement.

In its Notice, the Postal Service identifies differences between the Royal Mail Agreement and the baseline TNT Agreement, including: addition of "Customs Inspection" in Article 8; removal or addition of clauses (in Articles 10, 11, 24 and 25),

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<sup>10</sup> See Letter from Anthony Alverno, Chief Counsel, U.S. Postal Service, to Shoshana Grove, Secretary, Postal Regulatory Commission, May 6, 2013; Letter from Anthony Alverno, Chief Counsel, U.S. Postal Service, to Shoshana Grove, Secretary, Postal Regulatory Commission, June 28, 2013.

changes to certain terms of the Agreement (terms of termination options in Article 9, terms of “Indemnification and Liability,” including title, In Article 12). The Public Representative agrees with the Postal Service that these “differences do not affect the fundamental nature of the agreement”. Notice at 5. However, in its Notice, the Postal Service identifies one more difference that raises a significant concern about functional equivalence between the Royal Mail Agreement and the baseline agreement. While [the baseline] TNT Agreement establishes rates for inbound parcel services, only the Royal Mail Agreement establishes rates for return of EMS parcels from the United States to the United Kingdom.

The difference identified above appears to be critical: return of EMS parcels from the US to the UK is an outbound ancillary service, and its inclusion into the inbound product grouping is more than questionable. The Postal Service’s reference to the Australia Post Agreement and Canada Post Agreement does not provide much support either. First, IMRS parcels subject to these agreements are inbound parcels. Response, Question 4b. Second, the Postal Service added the IMRS ancillary services to the referenced agreements in the form of amendment, after the agreements had already been included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. However, the proposed Royal Mail Agreement is a stand-alone agreement, independent of any other agreements with Royal Mail Group LTD., and is not a successor of any agreement currently included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*, Questions 1,3,5. The Public Representative concludes that the Royal Mail Agreement is not financially equivalent to the baseline agreement.

In one of its prior notices later approved by the Commission, the Postal Service stated that “an agreement concerning outbound competitive services...would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement by the Postal Service to purchase trucking services from highway contractors or to purchase air transportation from air carriers.”<sup>11</sup> The Public

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<sup>11</sup> Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, Docket No. CP2014-39, April 10, 2014 at 4-5.

Representative concludes that the Postal Service's position expressed above contradicts the Postal Service's position expressed in the current Notice.<sup>12</sup>

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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<sup>12</sup> In the Response, the Postal Service proposes the amendment to the language of section 2515.10.1 of the Mail Classification Schedule (MCS). Response, Question 7. However, in case of such amendment, the Postal Service should have also filed the applicable "MC" docket.